as good a cause of action as where malice is present. But late American cases are opposed to the English doctrine. *Brown Hardware Co.* v. *Ind. Stove Works* (1902), —Tex. Civ. App. —, 69 S. W. Rep. 805; 1 MICHIGAN LAW REV. 333.

MINES AND MINING—EXTRALATERAL RIGHTS—DEEDS—CONSTRUCTION.—The owner of two adjoining mining claims deeded to plaintiff an irregularly shaped portion of one of them with end lines not parallel to those of the original claim and described as a part of the "Johnstown quartz lode mining claim." Later he granted to the defendant all his interest in the remainder of this and the adjoining claim. In a suit to enjoin defendant's trespass. *Held*, that the injunction should be granted. *Montana, etc. Co.* v. *Boston, etc. Co.*, (1902),— Mont. —, 70 Pac. R. 1114.

The court says: "In determining the effect of these conveyances regard must be had . . . to the character of the property granted . . . The deed (plaintiff's) omits any reference to the veins or the dips, spurs, angles thereof but it is apparent therefrom that the parties were dealing with the property as quartz mining property, that is a definite portion of the 'Johnstown quartz lode mining claim.'" Hence the conclusion was that the plaintiff was entitled to extralateral rights as to all veins having their apices within the end lines of the conveyed portion; and that such rights were bounded by planes drawn parallel to the end lines of the original location, passing through the points where such veins cross the end lines of the portion conveyed. Plaintiff in support of his claim cited *Boston etc. Co.* v. *Montana Co.*, 89 Fed. R. 529. In this case Judge De Haven, construing the same deed, held that plaintiff's extralateral rights were bounded by planes parallel to the actual end lines of the conveyed portion, which diverged from each other on the dip of the vein, thus giving plaintiff much greater rights. He cited in support of his position *Richmond Min. Co.* v. *Eureka Min. Co.*, 103 U. S. 839; *Eureka Min. Co.* v. *Richmond Mining Co.*, 8 Fed. Cases 819, 4 Sawy. 302; *Stinchfield* v. *Gillis*, 107 Cal 86, 40 Pac. R. 98. But in none of these cases was this point involved.

MUNICIPAL CORPORATIONS — CONSTITUTIONAL LAW — TAXES AND LICENSES.—Mandamus to compel the treasurer of the city of Auburn to place certain funds, collected by the city under an ordinance, at the disposal of the officers of the Auburn school district. The question for the court to determine was whether the moneys collected were license moneys within the meaning of Art. VIII., Sec. 6, of the constitution of Nebraska, which provided, "All such fines, penalties and license moneys shall be appropriated exclusively to the use and support of common schools in the respective subdivisions where the same may accrue." *Held*, that the moneys collected were taxes and the mandamus proceedings were dismissed. *State ex rel. Auburn School District* v. *Boyd* (1902), — Neb. —, 89 N. W. Rep. 416, 58 L. R. A. 108.

The object of the ordinance was to impose "an occupation tax on certain occupations or business." By one section it was unlawful for any person to engage in certain occupations or business, until he had paid the tax and the same was evidenced by a receipt. Another section provided for penalties for the violation of the ordinance. The majority of the court argued that inasmuch as it was clearly the intention to exercise the taxing power and as the municipality had such power, the imposition was a tax, even though the payment of the tax was made a condition precedent to the right to engage in these occupations. They also contended that as the city charter provided for the enforcement of ordinances by fines and other punishments, the section pertaining to penalties was valid. In his minority opinion Judge Holcomb asserted that, by a proper construction of the form as well as the substance of

the ordinance, it must be viewed as one intended to impose an occupation tax only. He declared it contemplated a tax upon businesses which by another ordinance were unlawful unless licensed. "An occupation tax," he said, "presupposes a lawful business which should bear a part of the expenses of municipal government, while a license tax ordinance declares the business unlawful without a license to engage therein having first been obtained." The decision of the court naturally leads us to enquire, what is the distinguishing characteristic of a license? It has been defined as the grant of a privilege conferring an authority to do something which without the grant would be illegal. The payment of the license fee to secure the privilege is made a condition precedent to the right of engaging in the particular occupation of business. COOLEY ON TAXATION, p. 596. BOUVIER defines a license as, "an authority to do some act or carry on some trade or business, in its nature lawful but prohibited by statute except with the permission of the civil authority or which would otherwise be unlawful." The imposition of the license may be made either under the taxing power for the purpose of raising revenue or under the police power as a regulation merely. COOLEY ON TAXATION, p. 59. ELLIOTT ON MUNICIPAL CORPORATIONS, 89. Generally the authority to license delegated by the legislature to a municipal corporation will be denied to be for the purpose of regulation, unless a contrary intention clearly appears. AM. & ENG. ENC. "*License*," (1st ed.) vol. xiii. p. 532, note and cases cited; COOLEY ON TAXATION, p. 597. The constitutional provision however, that all license moneys were to be appropriated exclusively to the use and support of the common schools in the respective subdivisions where the former may accrue "would indicate that license moneys were to be imposed under the taxing power, for when a license is imposed uuder the police power the fees required are for the purpose of covering the probable expense of issuing the license, inspecting and regulating the business. *Jackson* v. *Newman*, 59 Miss. 385, 42 Am. Rep. 367; *State* v. *New Brunswick*, 43 N. J. L. 175; *Vansant* v. *Harlan Stage Company*, 59 Md. 330; *Van Hook* v. *Salem*, 70 Ala. 361, 45 Am. Rep. 85; *Littlefield* v. *State*, 42 Neb. 223, 28 L. R. A. 588. A revenue must have been intended as the moneys collected were to help support the common schools, while under the exercise of the police power no moneys could have accrued. See also *Chilvers* v. *People*, 11 Mich. 43. In the absence of statutory enactments a tax is not a debt in the sense that a common law action can be brought for its recovery and therefore it does not fall within the Nebraska constitution which forbids imprisonment for a debt. *Augusta* v. *North*, 57 Me. 392, 2 Am. Rep. 55; *Hibbard* v. *Clark*, 56 N. H. 155, 22 Am. Rep. 432; *Johnson* v. *Howard*, 41 Vt. 122, 98 Am. Dec. 568; *Jack* v. *Weiennett*, 115 Ill. 105; *St. Louis* v. *Sternberg*, 69 Mo. 289; *Denver City Railroad Company* v. *City of Denver*, 21 Colo. 350, 29 L. R. A. 608, 41 Pac. 820; *Campbell* v. *Anthony*, 40 Kan. 653, 20 Pac. 492. The Nebraska courts have taken a dogmatic view of penal provisions of such ordinances as the one in question and in a series of cases have held that a tax came within the constitutional provisions mentioned above. *State* v. *Green*, 27 Neb. 64, 42 N. W. 913; *Magneau* v. *City of Fremont*, 30 Neb. 844, 9 L. R. A. 786, 49 N. W. 373; *State* v. *Atkin*, 61 Neb. 490, 85 N.W. 395. The reasoning of the court in the last case cited, is also at variance with that of the court in the present case.

MUNICIPAL CORPORATIONS—STREET RAILWAYS—POLICE POWER.—A city ordinance, passed subsequent to the chartering of defendant company, required street railway companies to pave between the rails of their roads and to keep such pavement in repair. Defendant failed to repair as required by the ordinance, and as a result of the defective condition of the pavement